

### REMARKS

In the Office Action dated December 14, 2005, claims 1-8 and 22-23 were rejected under 35 U.S.C. § 103 over WO 00/33498 (WO '498) in view of U.S. Patent No. 6,683,860 (US '860); and claims 9-21 and 24 were rejected under § 103 over WO '498 in view of U.S. Patent No. 6,459,687 (Bourlas).

It is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to claim 1 over WO '498 and US '860 for at least the following reasons: (1) no motivation or suggestion existed to combine the teachings of these two references; and (2) even if combined, the asserted combination of WO '498 and US '860 does not teach or suggest all elements of claim 1. *See* M.P.E.P. § 2143 (8<sup>th</sup> ed., Rev. 3), at 2100-135.

The Office Action cited to passages on pages 17 and 18 of WO '498 as disclosing part of the releasing act recited in claim 1. The cited passages on pages 17 and 18 of WO '498 refer to the flow depicted in Fig. 5 of WO '498. Basically, Fig. 5 of WO '498 shows a flow of steps for transmitting an RLC block from a mobile station to a network. In step 502 of Fig. 5 of WO '498, the mobile station checks whether the RLC block to be transmitted is the last one in a data block of a TBF. WO '498, 17:36-37. If so, the mobile station sets parameters to allow release of the TBF. WO '498, 17:37-18:2. If in step 502 it is determined that the RLC block is not the last one of the TBF, the mobile station checks in step 510 whether the RLC block is the last one in the buffer. WO '498, 18:4-5. If so, the mobile station sets parameters to start a passive period during which the TBF is not released. WO '498, 18:5-8.

Thus, what is occurring in WO '498 is as follows: If the RLC block is the last of the TBF, then the TBF can be released; but if the RLC block is not the last of the TBF, the TBF is not released. Release of the TBF in WO '498 is thus premised on whether or not an RLC block is the last one in a data block of the TBF. As correctly conceded by the Office Action, this flow associated with Fig. 5 of WO '498 does not disclose releasing a logical connection between the mobile station and a wireless access system according to a first procedure *if subscribed to the first level of service* and according to a second, different procedure *if subscribed to a second level of service*. *See* 12/14/2005 Office Action at 3 (conceding that WO '498 "does not explicitly disclose the different levels of service with each procedure").

However, the Office Action relied upon US '860 as disclosing claimed subject matter that is not disclosed by WO '498. Specifically, the Office Action pointed to column 4, lines 39-46, of US '860 as disclosing the subject matter at issue. The cited passage describes the ability of the system to simultaneously use several different types of services by establishing multiple TBFs. The different types of services mentioned in the cited passage in column 4 of US '860 is explained further in column 1, which indicates that the different types of services include IP telephony services, streaming application services, facsimile services, or e-mail services. US '860, 1:44-51. However, the reference to different types of data communications that can be performed by a mobile station in US '860 does not teach or suggest the following elements of claim 1: determining if a mobile station is *subscribed* to a first level of service or a second level of service; and releasing a logical connection between the mobile and the wireless access system according to a first procedure if *subscribed* to the first level of service and according to a second, different procedure if *subscribed* to the second level of service.

Because neither WO '498 nor US '860 teaches or suggests all elements of the claim, it is respectfully submitted that the hypothetical combination of WO '498 and US '860 also does not teach or suggest all elements of claim 1. Therefore, a *prima facie* case of obviousness has not been established for at least this reason.

Moreover, it is respectfully submitted that the *prima facie* case is defective for the additional reason that no motivation or suggestion existed to combine the teachings of WO '498 and US '860. Whereas WO '498 addresses the communication of delay sensitive data by making decisions on whether or not to release a TBF based on whether or not an RLC block is the last one in a TBF, US '860 employs a completely technique, namely the use of two simultaneous TBFs assigned for a determined transfer direction between a mobile station and a network. US '860, 4:34-36. The multiple TBFs with different parameters in US '860 can be multiplexed so that transmission of different types of data can use different ones of the TBFs. US '860, 9:31-42. In this manner, it is not necessary to release one TBF and to establish a new TBF for transferring data according to different RLC modes, such as transferring IP telephony and mobility management messages. US '860, 4:39-46. There is no suggestion anywhere of releasing a logical connection according to different procedures based on the mobile station being subscribed to different service levels. Moreover, there is no suggestion anywhere that it would

even be desirable to incorporate the US '860 multi-TBF mechanism into the system of WO '498, which uses a mechanism to decide whether or not to release a TBF based on whether an RLC block is the last one in a TBF. *See In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992) ("The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the *desirability* of the modification.") (emphasis added). Here, clearly, WO '498 and US '860 employ completely different mechanisms to address their respective issues, with no suggestion anywhere that it would be desirable to modify WO '498 with the mechanism of US '860. In fact, incorporating US '860 into the system of WO '498 would change the principle operation of WO '498. As indicated by the M.P.E.P., if a proposed modification or combination of prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are *not* sufficient to render the claims *prima facie* obvious. M.P.E.P. § 2143.02, at 2100-138.

In view of the foregoing, it is clear that a *prima facie* case of obviousness has not been established with respect to claim 1.

Independent claim 22 is allowable over WO '498 and US '860 for similar reasons.

Independent claim 9 was rejected as being obvious over WO '498 and Bourlas. It is respectfully submitted that claim 9 is non-obvious over WO '498 and Bourlas.

The Office Action conceded that WO '498 "does not explicitly disclose a controller operable to determine if a mobile station is subscribed to a first level of service or a second level of service." 12/14/2005 Office Action at 5. Nevertheless, the Office Action stated that this feature would have been obvious. *Id.* No objective evidence was cited by the Office Action to support this conclusory statement that the claim feature not disclosed by WO '498 would have been obvious. If a reference exists that suggests a modification of WO '498 to provide a controller operable to determine if a mobile station is subscribed to a first level of service or a second level of service, Applicant respectfully requests the production of such a reference. Absent this reference, the obviousness rejection is clearly defective.

The Office Action further conceded that WO '498 does not disclose a controller to generate filler data for sending to the mobile station. Claim 9 has been amended to replace "filler data" with "dummy data." This change is made to clarify that it is dummy data that is sent

to the mobile station, and not just actual data that fills a data frame, which is what is disclosed by the cited passage in column 25 of Bourlas. In column 25, at lines 53-56, Bourlas refers to a decision module that is operable to determine if a buffer contains data to fill a downlink portion of a data frame. Note that the data from the buffer that fills the downlink portion of the data frame is actual data (in the form of data packets, *see* 25:51-52). The data from the buffer that fills the data frame in the cited column 25 passage is clearly *not* dummy data sent to the mobile station.

Moreover, there existed absolutely no motivation to incorporate the teachings of Bourlas into WO '498. As disclosed by Fig. 5 of WO '498, the setting of various parameters is used for indicating whether or not to release a TBF. There existed no reason to incorporate sending of dummy data from a controller to a mobile station in the arrangement of WO '498.

In view of the foregoing, it is respectfully submitted that claim 9 is non-obvious over the WO '498 and Bourlas.

Dependent claims of claim 9 are allowable for at least the same reasons. Moreover, with respect to claim 10, the Office Action did not even cite any passage of WO '498 or Bourlas as disclosing the subject matter recited in claim 10. In claim 10, it is recited that the controller is adapted to not generate dummy data for sending to the mobile station if the mobile station is subscribed to the second level of service. The Office Action conceded that WO '498 does not disclose this feature, but then stated that this feature would have been obvious, with no citation of any actual evidence. *See* 12/14/2005 Office Action at 6. Claim 10 is thus further allowable for this additional reason.

Similar types of rejections were also asserted against dependent claims 11 and 12, in which the Office Action concedes that WO '498 fails to teach the respective recited features, but then made a conclusory statement that such features would be obvious, without any supporting evidence.

Independent claim 18 was also rejected as being obvious over WO '498 and Bourlas. Claim 18 has been amended to replace "filler data" with "dummy data" for better clarification. Also, the subject matter of dependent claim 20 (now cancelled) has been incorporated into claim 18. With respect to the subject matter of former claim 20, the Office Action did not cite to any evidence regarding starting a timer to provide a time period during which dummy data is to be

sent from a core network system to a wireless access system. Neither WO '498 nor Bourlas teaches or suggests this feature. Therefore, a *prima facie* case of obviousness cannot be established for this reason.

Dependent claims, including newly added dependent claim 25, are allowable for at least the same reasons as corresponding independent claims.

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 20-1504 (NRT.0092US).

Respectfully submitted,

Date: Mar 14, 2006



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